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# Supreme Court of the United States

October Term, 1973
No. 73-1463

RAPHAEL MONTANARELLO, et al.,

*Petitioners,*

*vs.*

RICHARD M. NIXON,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Reply of Petitioners to Memorandum for the Respondent in Opposition.

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IN THE

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RAPHAEL KONIGSBERG, *et al.*,

*Petitioners,*

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## Reply of Petitioner to Memorandum for the Respondent in Opposition.

The sole contention of respondent is that an incumbent President can only be removed from office by Congress, in other words, by impeachment.

But impeachment has no application to the facts alleged here. Impeachment applies only to an office *lawfully* held. *State Ex rel. Moore v. Blake,* 142 So. 418, 419, 225 Ala. 124; 67 C.J.S. Officers, § 68, at fn. 96.

As a result, if the charge against respondent is, as here, acts constituting gross fraud in his election, his election may be proved invalid and void so that impeachment would not apply.

Again, if, as here alleged, other persons than respondent knowingly took part in all of those acts, the election may be proved invalid and void whether or not respondent participated in those acts.

Thus, impeachment has no bearing here; the issue here is the validity of the election. Indeed, had the court below also adopted respondent's impeachment contention, that would, in view of *State Ex rel. Moore v. Blake, supra,* have added a third conflict to the two pointed out in our petition as reasons for granting the writ.

Respectfully submitted,

GEORGE T. ALTMAN,
*Attorney for Petitioners.*